

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL : MDL No. 2804
PRESCRIPTION OPIATE :
LITIGATION : Case No. 17-md-2804
:
APPLIES TO ALL CASES : Hon. Dan A. Polster
:
:

HIGHLY CONFIDENTIAL

SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

- - - -

JANUARY 22, 2019

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VIDEOTAPED DEPOSITION OF WALTER WAYNE DURR,
taken pursuant to notice, was held at Marcus &
Shapira, One Oxford Center, 35th Floor, Pittsburgh,
Pennsylvania 15219, by and before Ann Medis,
Registered Professional Reporter and Notary Public in
and for the Commonwealth of Pennsylvania, on Tuesday,
January 22, 2019, commencing at 8:57 a.m.

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1 subject is Pharmacy Controllable Substance
2 Location.

3 Was that an email sent to you back in July of
4 2009?

5 A. Yes.

6 Q. And was this during the timeframe when
7 you, Mr. Carlson and others were getting prepared
8 for HBC to become a distributor of controlled
9 substances?

10 A. Yes.

11 Q. And if you could, just tell me who was
12 Joseph Hurley.

13 A. Joseph Hurley, at that time, I believe
14 he was the vice president of distribution. He's
15 currently our senior vice president of
16 distribution and logistics.

17 Q. How about Andy Zelaski?

18 A. Andy Zelaski was a manager who reported
19 to me and was the manager that I put in charge of
20 the pharmacy area.

21 Q. And then I think we know who Mr. Carlson
22 is.

23 How about the -- it looks like there's three
24 individuals who were copied. If you could, just
25 tell me who those three individuals are.

1 facility to comply with the Controlled Substances
2 Act?

3 MR. BARNES: Object to form.

4 THE WITNESS: I'll say no. We would
5 have a hand in devising or working with Greg and
6 his group on making sure or ensuring that we were
7 following the proper process and procedures.

8 BY MR. HUDSON:

9 Q. Well, that's what I'm trying to
10 understand. You've testified that from a
11 compliance perspective, it was a joint effort
12 between the facility and Mr. Carlson's group.

13 And I guess what I'm trying to figure out is
14 within that joint responsibility, were there
15 certain responsibilities that fell on the facility
16 versus Mr. Carlson's group?

17 How do I figure out who was responsible for
18 what?

19 A. Yes. So an example would be cameras and
20 the loss prevention piece that fell to Andy
21 Zelaski and myself, primarily Andy, and working in
22 connection with the DEA on what are either best
23 practices or what was regulatory and needed.

24 Again, that was just an example.

25 Q. Sure. And if you could, just walk

1 through what you believed to be the obligations
2 that arose in 2009 when that facility became a
3 distributor of controlled substances.

4 And just, if you could, describe what you
5 recall about the steps taken by your team or
6 Mr. Carlson's team to put policies, procedures or
7 things in place to comply with the Controlled
8 Substances Act.

9 A. So we had -- we knew to bring in
10 controlled substances, we had to have a specific
11 area. And it had to meet DEA requirements of the
12 gauge of steel in the wire for the cage, whether
13 there was a roof on it or not, or ceiling I guess
14 I should say. It had to be bolted down to the
15 floor. We had to ensure that the seams were
16 tack-welded and not just bolted.

17 And our Sonitrol system, we had to work with
18 our loss prevention to set that up, ensuring that
19 background checks were covered, drug and alcohol
20 screens were covered.

21 Those are all the things that -- again,
22 working jointly with Greg Carlson and the DEA to
23 get that information to know what direction we
24 should go to properly set up this facility.

25 Q. Did you personally have any

1 communications or discussions with the DEA at this
2 time in 2009 when the facility was being set up?

3 A. I would have.

4 Q. And who did you speak with at the DEA?

5 A. I don't fully remember his last name.
6 His first name was Lou. I think it started with a

7 C. It's been quite a few years since.

8 Q. Sure. No, I understand. And I'm just
9 trying to get your best testimony on the record.

10 How many times would you say you spoke to
11 Lou C at the DEA or of the DEA?

12 A. I would say leading up to opening or
13 starting the operation, maybe two times, maybe
14 three. I can't speak for how many times he may
15 have spoke with anyone in corporate.

16 Q. Were those discussions focused on the
17 security requirements, making sure that the
18 facility was meeting the DEA security
19 requirements?

20 A. Yes.

21 Q. Do you know if you reached out to him or
22 if he reached out to you?

23 A. I can't. I don't remember.

24 Q. Anything else you can think of that the
25 HBC warehouse did as part of its process of

1 becoming a distributor of controlled substances?

2 A. Not top of mind, no.

3 Q. Is it fair to say that the measures or
4 the steps or the plan that you implemented for the
5 warehouse were focused on the security
6 requirements of the Controlled Substances Act?

7 A. It was one of our focuses.

8 Q. Well, so far you've talked about
9 security cameras being installed; right?

10 A. Yes.

11 Q. And then you talked about creating a
12 specific area in the warehouse for controlled
13 substances that was enclosed with steel and bolted
14 down to make sure that it was a secured area;
15 right?

16 A. Yes.

17 Q. And then you talked about background
18 checks for employees who would be dealing with the
19 controlled substances; right?

20 A. Yes.

21 Q. So can we agree that all of those were
22 steps taken to address either security or theft
23 controls -- I'm sorry -- security or theft
24 concerns?

25 A. Yes.

1 Q. Anything else you can think of -- I just
2 want to make sure that I've exhausted this
3 topic -- that either your group or Mr. Carlson's
4 group did to prepare the warehouse to become a
5 distributor of controlled substances?

6 A. One is, as stated in one of the
7 exhibits, was just inventory controls.

8 Q. And tell me what steps HBC did to
9 address inventory controls.

10 A. Well, we implemented a more robust
11 counting system than we had out in, I'll say, the
12 general HBC warehouse.

13 Example, and I don't know that I'll get the
14 numbers exactly right, but for the narcotics cage
15 as we refer to it, we would count that prior to
16 anybody selecting every day. We would count it
17 after -- as the team members were leaving to go to
18 break, the selectors.

19 We would count it before each route left.
20 And then that was for the pick slots. And then we
21 would count the reserves once a month unless we
22 saw any discrepancies in our pick location.

23 Q. So the inventory controls that were put
24 in place involved more rigorous and more regular
25 counting of the inventory to make sure that the

1 inventory that was supposed to be there was, in
2 fact, there?

3 A. Yes.

4 Q. Anything else that you can think of in
5 terms of controls or steps taken at the HBC
6 warehouse to become a distributor of controlled
7 substances?

8 A. As we talked, our security, we had a fob
9 system around the entire building. Like we had a
10 specific fob system, Sonitrol system.

11 We regulated who had access to the room
12 itself. And then we had even more limited access
13 to the narcotics cage itself along with locks, and
14 the cage itself had its own sensors and alarm
15 system specific to the cage.

16 Q. Anything else you can think of?

17 A. Not at this time.

18 Q. I'm going to switch gears a little bit
19 and hand you what I've marked as Exhibits 3 and 4.

20 (HBC-Durr Exhibits 3 - 4 were marked.)

21 BY MR. HUDSON:

22 Q. Mr. Durr, I'll represent to you that
23 Exhibit 3 is some responses to questions that the
24 plaintiffs asked HBC.

25 And I'm going to turn to page 8 of these

1 A. I'm not aware of any from the corporate.
2 That doesn't mean there weren't any. I'm just not
3 aware of them.

4 Q. Would it be fair to say then that
5 between 2009 and 2016, there was no coordination
6 between yourself and the Giant Eagle corporate
7 office in terms of using Giant Eagle systems to
8 monitor suspicious orders of controlled
9 substances?

10 A. That would not be fair. We -- "we"
11 being my team, Andy Zelaski and Christy Hart --
12 had daily communications with the corporate team
13 via phone and/or through our systems monitoring
14 inventory and communicating inbound/outbound
15 shipments.

16 So we believe we had a system in place.

17 Q. Yourself, Mr. Zelaski and Erin Hart?

18 A. Christy Hart.

19 Q. I'm sorry. Christy Hart.

20 Was there anyone else at the HBC facility who
21 was involved in communicating with the compliance
22 group?

23 A. Those were the primaries. On a day off
24 we had a backup for Christy. It was typically
25 Dominique McFann. But Christy and Andy were the

1 primaries.

2 Q. And when did these communications begin?

3 A. From the moment we opened operations.

4 Q. From the moment that you began acting as
5 a distributor of controlled substances?

6 A. Yes.

7 Q. So from November of 2009 until the
8 present?

9 A. I would say probably even before that,
10 as you've seen, as we were setting up to go into
11 distribution.

12 Q. And I guess what I'm focused on is
13 suspicious order monitoring of controlled
14 substances shipments that were going in and out of
15 the warehouse.

16 Is that your understanding of suspicious
17 order monitoring?

18 A. Yes.

19 Q. We've looked at -- if we go back to
20 Exhibits 5 and 6 -- well, actually, and Exhibit 4
21 as well, can we agree that HBC did not have any
22 written policies or procedures in effect at least
23 prior to August 1, 2014?

24 A. No. We can't agree on that.

25 Q. Are you aware of written policies or

1 procedures that existed prior to August 1, 2014
2 relating to monitoring of suspicious orders of
3 controlled substances?

4 A. I would say we had a system in place as
5 it related to suspicious order monitoring.

6 Q. Okay. And my question though is more
7 specific. And we'll get there, and I'll ask you
8 more questions about what that program or system
9 looked like.

10 I guess what I'm focused on right now are
11 just written policies or procedures. Okay?

12 A. I believe we had those policies. Where
13 they are or what happened to them through time, I
14 can't answer that.

15 Q. You believe that the HBC warehouse had
16 suspicious order monitoring policies or procedures
17 that existed prior to August 1, 2014?

18 A. I can't say that we had a policy
19 specifically as you're stating it, but I believe
20 we had a system in place and processes and
21 procedures.

22 Q. Did you have those in writing?

23 A. I would say that we did, but I don't
24 have them.

25 Q. When were those policies or procedures

1 put into writing?

2 A. I would say in 2009, as we were working
3 to set up the facility.

4 Q. So I asked you previously questions
5 about all the steps that HBC took to prepare the
6 warehouse to become a distributor of controlled
7 substances.

8 Do you remember that?

9 A. I do.

10 Q. And I asked you, I think, three or four
11 times because I wanted to try, as best I could, to
12 get an exhaustive list.

13 You talked about securities and cameras. You
14 talked about the fob that had limited access. You
15 talked about controlling the specific area with a
16 cage of steel that's bolted down. You talked
17 about background checks. And you talked about
18 inventory controls that were put in place to make
19 the counting more robust and more regular at the
20 facility, specifically for controlled substances.

21 Do you remember that testimony?

22 A. I do.

23 Q. And at that time, when I asked you those
24 questions, you didn't identify suspicious order
25 monitoring of controlled substances as one of the

1 Manhattan that we would use for cycle counting,
2 inventory reconciliation, entering purchase
3 orders, but they were all housed under the
4 Manhattan.

5 Q. Am I correct though that Manhattan did
6 not have any functionality where the warehouse
7 could set thresholds or quantities of suspicious
8 orders of controlled substances using historical
9 ordering patterns or things of that nature?

10 A. Not to my knowledge, no.

11 Q. So in terms of monitoring suspicious
12 orders of controlled substances, is it fair to say
13 that the HBC warehouse did not have any computer
14 systems that were utilized on a systematic -- in a
15 systematic way to monitor orders?

16 A. No. I don't believe that's fair to say
17 that. We could monitor orders. We knew exactly
18 what was coming in from the stores. We also knew
19 exactly what was coming in from the vendors. And
20 there were checks and balances in place.

21 In addition, the corporate team had full
22 visibility of our inventory at all times and could
23 see if there was any fluctuation whatsoever.

24 Q. So what I'm trying to separate out is
25 corporate, because it's my understanding -- is it

1 suspect at the time within our walls. On a
2 grander scale, I don't know that I can put the
3 framework to that.

4 But if we at HBC saw anything I'll say out of
5 the ordinary, our first communication is to the
6 pharmacy group to understand what we're seeing.
7 I'm not saying that we did, but...

8 Q. And that's, I guess, what I'm trying to
9 get an idea of, is what would be -- what criteria
10 would the warehouse apply under your system or
11 program to try to figure out whether a shipment is
12 out of the ordinary.

13 A. So we still see it today even outside of
14 the pharmacy area.

15 Our team members in that specific area, the
16 narcotics room, we were very limiting on who went
17 in there. Typically, no more than two team
18 members a night would be in that room, and most
19 times we tried to keep it to one.

20 They would get attuned to the normalcies, if
21 you will, of orders going in and out of that room,
22 because they're picking the same items over and
23 over again day in and day out.

24 So, for instance, if they see a store
25 typically would get ten selling units of a

1 particular item, and now all of a sudden the store
2 has 50 selling units going out, the team members
3 would bring it to our attention, either Christy
4 Hart or whoever the supervisor is. And our first
5 call would be to the pharmacy, is this truly an
6 order that was placed and are those quantities
7 that you absolutely want?

8 Q. So tell me then how HBC is able to
9 figure out that that particular store usually
10 orders ten of that item, and now they're ordering
11 50?

12 A. A lot of that is just -- I'll categorize
13 it as empirical from the team members -- not from
14 the data, but from the team members working so
15 closely with those products and being in that same
16 area on a regular basis.

17 Q. So there's not -- so the identifying the
18 suspect orders or the orders that are not
19 ordinary -- I think your words were out of the
20 ordinary -- that would fall on the particular
21 pickers that are working at the facility to fill
22 the orders, and they'd be relying on their
23 experience and knowledge from doing that day in
24 and day out filling orders?

25 A. As a first line. I can't answer for

1 Exhibit 11?

2 A. To a small degree.

3 Q. Do you know -- assuming that any of
4 these numbers are correct, and I'm qualifying
5 that, but we're not sure -- what happened to these
6 hydrocodone combination products shipped by HBC to
7 the Giant Eagle pharmacies?

8 A. They would have gone into our
9 pharmacies.

10 Q. And what happened to them after they
11 went to the pharmacies?

12 A. They would have filled legal
13 prescriptions.

14 Q. So, to your knowledge, were they
15 diverted in any way?

16 A. Not to my knowledge.

17 Q. Do you know the difference between -- or
18 do you know what the term diversion means?

19 A. I do.

20 Q. What does it mean to you?

21 A. I believe that something is being pulled
22 in a different direction than its intended purpose
23 or intended sale or use.

24 Q. You mentioned a couple of times in your
25 testimony that HBC -- it's a single warehouse; is

1 that correct?

2 A. Yes.

3 Q. Located in Washington, PA?

4 A. Yes.

5 Q. Do you know what the size of that
6 warehouse is?

7 A. 305,000 square feet.

8 Q. And of that 305,000 square feet, how
9 much is dedicated to pharmacy operations?

10 A. There was 12,000 square feet and an
11 additional 2,000 for a receiving area. So 14,000
12 total.

13 Q. 14,000 for pharmacy?

14 A. Yes.

15 Q. Including all pharmaceutical products,
16 even noncontrolled?

17 A. Yes.

18 Q. What portion of that 12,000 square feet
19 were dedicated -- was the narc room, so-called
20 narc room?

21 A. Maybe 2,000 square feet.

22 Q. Was the narc room partitioned off in
23 some secure way from even the pharmacy room?

24 A. Yes.

25 Q. And was the pharmacy room partitioned

1 off from the rest of the warehouse?

2 A. Yes.

3 Q. And what was the rest of the warehouse,
4 the other 292,000 square feet, what was that
5 dedicated to?

6 A. That's health/beauty care items,
7 cigarettes, tobacco, candy, mints.

8 Q. Okay.

9 A. General merchandise.

10 Q. And was all that product shipped to
11 Giant Eagle grocery stores?

12 A. Yes.

13 Q. Did the HBC warehouse ship to any
14 entities other than affiliated Giant Eagle grocery
15 stores and Giant Eagle pharmacies?

16 A. Pharmacies, only Giant Eagle. For the
17 grocery side, we did have some nonbanners and
18 independent stores.

19 Q. Independent Giant Eagle stores?

20 A. Yes.

21 Q. All right. But for the pharmacy --

22 A. Giant Eagle only.

23 Q. -- was that Giant Eagle only?

24 A. Yes.

25 Q. And would that be to pharmacies

1 throughout the Giant Eagle regional chain?

2 A. Yes.

3 Q. Do you know approximately how many
4 pharmacies are in the Giant Eagle regional chain?

5 A. I believe 200.

6 Q. About 200?

7 A. Yeah.

8 Q. Did Giant Eagle ever -- did the HBC
9 warehouse ever supply any internet pharmacies?

10 A. No.

11 Q. Did the HBC pharmacy ever supply
12 Schedule II opioids to any entity, including Giant
13 Eagle?

14 A. No.

15 Q. Did the HBC warehouse -- with respect to
16 the drugs at issue in this case, do you understand
17 those to be Schedule II opioids?

18 A. Yes.

19 Q. And when Giant Eagle distributed --
20 well, let me back up.

21 Giant Eagle never or the HBC warehouse never
22 distributed Schedule II opioids; is that correct?

23 MR. HUDSON: Object to form.

24 THE WITNESS: No.

25

1 BY MR. BARNES:

2 Q. Did you understand hydrocodone
3 combination products to be a Schedule III for a
4 period of time before it was reclassified as a II?

5 A. Yes.

6 Q. And did the HBC warehouse, while it was
7 a Schedule III, distribute hydrocodone combination
8 products to Giant Eagle pharmacies only?

9 A. Yes.

10 Q. And when it was reclassified to a
11 Schedule II, did HBC stop distributing that
12 product?

13 A. Yes.

14 Q. Was that approximately in October of
15 2014?

16 A. I believe so. Again, I was not there at
17 that time.

18 Q. You talked a lot about the so-called
19 inbound and outbound controls at the HBC
20 warehouse. And I want to follow up a little bit
21 on that.

22 By inbound, do you mean the purchasing into
23 the warehouse?

24 A. Yes.

25 Q. Now, I want you to focus solely on

1 controlled substances.

2 Were you there when the cage system was set
3 up at the HBC warehouse in 2009?

4 A. Yes.

5 Q. And did you have responsibilities in
6 that role --

7 A. Yes.

8 Q. -- in getting ready to distribute
9 Schedule III and IV and V controlled substances?

10 A. Yes.

11 Q. And you said that you had some
12 interaction with DEA when doing that?

13 A. Correct.

14 Q. Does the name Lou Colissimo ring a bell
15 to you?

16 A. It does.

17 Q. And who is he?

18 A. I believe he was the DEA inspector at
19 the time.

20 Q. Was he from the regional DEA Pittsburgh
21 office?

22 A. I believe so, yes.

23 Q. And did he come out to the facility to
24 assist with setting up the facility for the
25 distribution of Schedule III, VI, and V controlled

1 substances?

2 A. Yes.

3 Q. Did he assist with providing DEA input
4 as to what the DEA wanted the warehouse to do in
5 order to get a registration and license to
6 distribute Schedule III, IV, and Vs?

7 A. Yes.

8 Q. And did that involve -- first, I'll
9 break it down -- the physical plant itself, what
10 the DEA wanted and required to distribute IIIs,
11 IVs, and Vs?

12 A. Yes.

13 Q. And did you meet all those requirements
14 with Agent Colissimo?

15 A. We did.

16 Q. Did he or his team inspect the facility
17 before, during, and after construction?

18 A. Yes.

19 Q. Did they approve the facility in those
20 inspections?

21 A. Yes.

22 Q. Now, beginning in 2009, when HBC first
23 began distributing Schedule III, IV, and V
24 controlled substances, you mentioned the so-called
25 warehouse management system was called Manhattan?

1 A. Yes.

2 Q. How long had that -- that was a
3 computerized system?

4 A. It was and is.

5 Q. And how long had that computerized
6 system been in effect at the warehouse in 2009?

7 A. 2005, we brought that onboard.

8 Q. And does that control the inventory at
9 the warehouse from beginning to end?

10 A. Yes.

11 Q. And does it also interface with the
12 Giant Eagle pharmacy ordering system?

13 A. It does.

14 Q. Does the Manhattan system inside the
15 warehouse, does it involve the use of scanners?

16 A. Yes.

17 Q. And is that given to all of the pickers?

18 A. Yes, it is.

19 Q. And, again, I'm just talking about the
20 pharmacy area.

21 The Vocollect system, is that at the
22 warehouse itself?

23 A. Yes.

24 Q. Does that interface with Manhattan?

25 A. Correct.

1 Q. And does the Vocollect system provide
2 direction electronically to pickers for each order
3 that has come in from the pharmacies?

4 A. Yes.

5 Q. And can you explain to us a little bit
6 more in detail how the Vocollect system works.

7 A. The orders come from the stores. Again,
8 they come through our system, routing first, and
9 then into the Manhattan system. They interface
10 with Vocollect.

11 The team members are assigned a particular
12 area in the building, pharmacy being one of those
13 areas, and the narcotics cage being a specific
14 area.

15 The team member would state that they were
16 ready to work in a particular region. Once they
17 identify the region, they would also identify what
18 printer they were going to work from.

19 From there, the system -- based on some
20 controls, meaning everything in the building is
21 weighed and measured so that we can properly cue
22 the totes in the trailers, the team members would
23 then be given a set of labels that are specific to
24 what should go in that tote.

25 Q. And what is a tote? Is that a box of

1 some sort?

2 A. You could call that a plastic box, if
3 you will, with a lid that folds in from both
4 sides.

5 Q. Okay.

6 A. Once they identified the region, the
7 printer, and get their set of labels, then we
8 would dictate how many labels they would get so
9 that we could maintain balance in selection. We
10 didn't want a particular selector stuck on one
11 store too long, potentially holding up routes.

12 Once that happened, the team member would
13 then be directed to an aisle, a bay, a shelf, a
14 slot. And then they would be told to pick the
15 quantity that the pharmacy had ordered.

16 As they're picking the quantities, they had a
17 wrist scanner, and they would pass the individual
18 quantities in front of that wrist scanner.

19 Q. Do you mean the bar codes --

20 A. Yes. The bar code.

21 Q. -- of what was being picked?

22 A. The bar code of what's being picked.

23 And as they would do that, they would place
24 it in the tote.

25 And then as they were finished, before they

1 would get their next order to pick, they would
2 have to scan or call in a check digit of that slot
3 to confirm they were in the right slot.

4 Once they do that, then they would just -- it
5 was redundant after that of selection process.

6 Q. So is the picking process through
7 Manhattan and the Vocollect system highly
8 computerized and monitored continually throughout
9 the day?

10 A. Yes.

11 Q. And does the system specifically tell
12 each picker where exactly -- you said the aisle,
13 the shelf, and the slot -- they're supposed to go
14 to make the pick?

15 A. Yes.

16 Q. And as they physically make the pick, it
17 scans right into the system?

18 A. Yeah. The team members pushing --
19 pulling it past a scanner.

20 Q. They scan the bar code on their scanner?

21 A. Correct.

22 Q. So then the system knows that it's in a
23 specific tote at that time?

24 A. Correct.

25 Q. And what happens to -- when the picker

1 is done picking in the narcotics room, what does
2 he do then?

3 A. So the team members not in the narcotics
4 room would take their tote -- and there was an
5 opening with a conveyor going into the narcotics
6 cage -- they would put their tote on there. It
7 would go into the narcotics room. And then the
8 narcotics selector would pick their portion of
9 that order and place it in the tote.

10 Q. I see. So not all the pickers in the
11 warehouse were allowed in the narcotics room?

12 A. Correct.

13 Q. And you said only one or two at a time?

14 A. Yes.

15 Q. And once that picking was done in the
16 narcotics room, what happened -- and it was put
17 into the tote -- what happened to the tote?

18 A. So once the selection is done and we
19 believe that we are ready to put that on the
20 trailer for shipment, our system has a process
21 where we have to scan every single individual
22 tote.

23 If you for some reason would miss a tote or
24 something was unaccounted for, the system would
25 not allow you to do what's called close load. It

1 then forces you down to a specific tote ID to
2 answer why or where that tote might be.

3 Q. So did you need to close the load before
4 you shipped?

5 A. Yes.

6 Q. And once it was ready for -- the load
7 was closed and was ready for shipment, what
8 happened to the tote?

9 And I guess it was on a pallet of some sort?

10 A. There would be pallets -- they were
11 already palletized. The pallet would be
12 shrinkwrapped and then loaded onto the trailer.

13 Q. And the trailers, who handled the --
14 whose trailers were they?

15 A. They were Talon Logistic or Giant Eagle
16 trailers.

17 Q. Did you ever do any shipping with
18 McKesson?

19 A. McKesson -- we would deliver to
20 McKesson, and then McKesson would deliver out to
21 the pharmacies from there.

22 Q. Okay. So that's outgoing inventory.

23 In the process you described, the so-called
24 Manhattan system, through the use of bar codes and
25 scanners, would know every step of the picking

1 process all the way up to the close load and is
2 ready for shipment?

3 A. Yes.

4 Q. And if there were any discrepancies in
5 that, you couldn't ship?

6 A. Yeah. We wouldn't ship.

7 Q. Now, how about on the inbound side; who
8 determines what's coming into the warehouse?

9 A. At that time that would have been Greg
10 Carlson's group.

11 Q. At corporate?

12 A. At corporate.

13 Q. And did they manage incoming inventory?

14 A. Yes.

15 Q. Corporate?

16 How would the warehouse know what to expect?
17 Trucks just show up or would you be told by
18 corporate that expect --

19 A. It would be scheduled through the
20 system. We would know that a vendor or, excuse
21 me, a carrier was coming, and on that particular
22 carrier would be a specific vendor.

23 Q. By the way, what type of physical
24 barriers or controls did you have for outgoing or
25 incoming shipments of narcotics?

1 A. We had several. We have the cage
2 itself. Outside of the cage, we had numerous
3 cameras. I believe we had probably 30 or 40
4 cameras within that small confine.

5 Q. 30 or 40 cameras --

6 A. Yes.

7 Q. -- for the pharmacy room itself?

8 A. Yes.

9 Q. How about inside the narc room?

10 A. I believe we at least had anywhere from
11 eight to 12 different angles looking at it, or
12 beaming into it, or an overlap.

13 Q. And was that to guard against theft and
14 diversion?

15 A. Correct.

16 Q. All right. And so once it was
17 palletized and ready for shipment, did it just sit
18 in the warehouse next to a crate of oranges?

19 A. No. We had two areas that -- it would
20 remain in the pharmacy room or it would be
21 monitored as it was being loaded.

22 Once it was loaded, the door was shut and
23 sealed, and those sealed numbers would be
24 communicated or written down on the outgoing
25 paperwork.

1 Q. You mean shut and sealed inside the
2 tractor-trailer?

3 A. Correct. In the trailer at -- while it
4 was stationed in our door. And from there, it was
5 leaving.

6 Q. Were there any precautions taken to
7 avoid people being able to slip in alongside the
8 trailer or under the trailer?

9 A. Yes. On a standard trailer in our door
10 50 and 51, they butted up very tightly against the
11 building itself. And they were at the height
12 where there were no gaps around that.

13 If we had an inbound UPS/Fedex load coming
14 in, those are box trucks that are at a lower
15 level, and they can't use those normal dock. So
16 what we had there was -- we had bollards, steel
17 bollards that were drilled into the ground. We
18 had a steel plate welded onto those bollards so
19 that no one could slide up under the truck or
20 right into the building.

21 We also had created a cage where, when the
22 UPS driver or Fedex driver would come, they would
23 pull those cages to the sides of the vehicle.
24 Again, to deter anyone from having quick or easy
25 access into the building.

1 If the driver was not delivering something
2 through that door and they had maybe one or two
3 cases and they were delivering them, first they
4 would have to ring a buzzer.

5 We had a camera right there so we could see
6 who was out there and if anybody was around or
7 near them, then make a determination if we were
8 going to let them into the building.

9 If we were going to let them into the
10 building, we then had a secondary cage, if you
11 will, at the door. That was locked at all times
12 and monitored. Then we would let them into there,
13 and then decide whether we were just going to
14 transact with them in the cage or let them into
15 the room itself.

16 Q. This is all related to narcotics
17 transactions?

18 A. This related to any of the pharmacy
19 items. Again, the narcotics would have been in
20 the cage separate of that.

21 Q. Okay.

22 A. So they weren't coming directly into
23 that narcotics cage.

24 Q. All of these physical controls, were
25 these something that Agent Colissimo from the DEA

1 had asked HBC to install, or did this include some
2 of his recommendations and then --

3 MR. HUDSON: Object to form.

4 THE WITNESS: I would say they included.

5 BY MR. BARNES:

6 Q. And was he aware during his inspections,
7 before you began distributing controlled
8 substances, about all these safety precautions?

9 A. Yes.

10 Q. Would the warehouse get copies of the
11 purchase orders issued by the buyers or the
12 category managers at corporate?

13 A. Yes. We had the ability to print those
14 in-house.

15 Q. And so if a truck pulled up, you would
16 be able to pull the purchase order?

17 A. Yes.

18 Q. And were there controls to match what
19 was being delivered to the purchase order?

20 A. Yes. Absolutely.

21 So we had a confined area where we would do
22 the pharmacy receiving, whether it be narcotic or
23 otherwise.

24 If it was a temperature-sensitive item, then
25 we would bring it all the way into the room. If

1 shift?

2 A. As I stated, when the team members would
3 go on their breaks, the support staff would stay
4 and remain back and do a count.

5 When the selection was done for that route,
6 we'd go in and count the cage again.

7 Q. Oh, at every break and at every
8 shipment?

9 A. Yes.

10 Q. And then at the end of the day?

11 A. Correct.

12 Q. So how many times, for example, would
13 Vicodin get counted in the specific slot and shelf
14 that it was on in the warehouse in any given day?

15 A. In a number of routes, anywhere from
16 like four to six times.

17 Q. Why were you doing all that cycle
18 counting?

19 A. We wanted to ensure the integrity of
20 our -- of our inventory. But also it gives you an
21 opportunity to catch anything that may be -- that
22 may be amiss.

23 Q. Would it give you an opportunity to spot
24 theft and diversion?

25 A. It would.

1 MR. HUDSON: Object to the form.

2 BY MR. BARNES:

3 Q. And was the Manhattan system the
4 computerized system that was monitoring every step
5 of this inbound and outbound process at the
6 warehouse?

7 MR. HUDSON: Object to the form.

8 THE WITNESS: Yes.

9 BY MR. BARNES:

10 Q. Did the DEA come in from time to time
11 and look at the warehouse system and check
12 inventory and ask for records?

13 A. Yes, they did.

14 Q. How often did that happen?

15 A. At least annually.

16 Q. At least annually.

17 And what would they typically ask for when
18 they came in?

19 A. They almost always -- I would say they
20 always went to the narcotics cage. They would
21 show up unannounced, introduce themselves, state
22 the nature of their business.

23 And they would -- I don't know whether they
24 randomly or how they decided on their list, but
25 they would show us or tell us which items they

1 wanted to do counts on. And they would also tell
2 us what dates they want to see our records from.

3 Q. So would they take, for example -- I'll
4 use Vicodin again. They'll say, we want all your
5 records on Vicodin for, what, a month or two-month
6 or three-month period of time?

7 A. Each scenario, they would give us a
8 specific -- I believe a specific date or week in
9 the past. Even they'd say, Show me your records
10 from June of 2010.

11 Q. And would you give them the records?

12 A. We would.

13 Q. Did any of these unannounced inspections
14 ever result in the DEA telling you that you're
15 doing something wrong at the warehouse?

16 A. No, they did not.

17 Q. Did the DEA ever find any discrepancies
18 with respect to the controlled substances that HBC
19 was distributing?

20 A. No, they didn't.

21 Q. Were the pickers in the narc rooms, were
22 they trained on the Manhattan system?

23 A. Yes.

24 Q. On how to use the scanners? How to
25 pick? Things of that nature?

1 A. Yes.

2 Q. The headsets that they were wearing, was
3 Manhattan instructing through the headsets?

4 A. Vocollect was instructing, yes.

5 Q. I'm sorry. Vocollect.

6 I mean, was there like a computerized voice
7 of some sort?

8 A. Yes.

9 Q. If I was wearing one, it would say, go
10 to aisle 3, bay 7, shelf 2, slot 7?

11 A. Yes.

12 Q. And then as I pick -- I'm a picker -- I
13 go to that slot, and I brush the bar code past my
14 wrist scanner?

15 A. Correct.

16 Q. And Manhattan then knows I did what I
17 was just told to do?

18 A. Correct.

19 Q. And does Manhattan then track the
20 inventory as it's being loaded into totes and then
21 all the way out the door?

22 A. Yes.

23 Q. You talked about the narcotics room
24 pickers.

25 Over time, would they become familiar with

1 outdated products.

2 Were these policies things that were followed
3 by HBC from 2009 going forward?

4 A. Yes.

5 Q. The next policy on page 636 is a damaged
6 and return product policy.

7 Was this a memorialization of a preexisting
8 policy that went all the way back to 2009?

9 A. Yes.

10 Q. And what is the purpose of this type of
11 policy? What is its function?

12 A. To ensure that any damaged or returned
13 products were being handled properly, and if they
14 required a quarantine, that they were properly
15 quarantined off.

16 Q. Would this damaged or returned product
17 be monitored by the Manhattan system?

18 A. Yes. Just the fact that it says, "All
19 damaged product must be removed from active
20 inventory," you would have to go into Manhattan
21 to remove that from active inventory.

22 Q. Okay.

23 A. So there would be a record of that.

24 Q. The next policy is -- on page 638 is the
25 suspicious order policy. Do you see that?

1 A. I do.

2 Q. It says, "Identified individuals from
3 Giant Eagle sourcing, pharmacy compliance, and HBC
4 team members must review pharmacy customer orders
5 and order trends on a regular and for-cause basis
6 to identify suspicious drug orders."

7 Do you see that?

8 A. I do.

9 Q. Was that something that was in effect in
10 2009 going forward?

11 A. Yes.

12 Q. And were suspicious orders blocked and
13 reported to the appropriate regulatory authority
14 within the timeframe set out in the policy?

15 MR. HUDSON: Object to the form.

16 THE WITNESS: I can't say that there
17 were any that were specifically blocked.

18 BY MR. BARNES:

19 Q. But does this memorialize a preexisting
20 policy?

21 A. Yes.

22 Q. Do you know, one way or the other, if an
23 order was flagged as suspicious or as an order of
24 interest to a pharmacy, would the order be held or
25 would it be shipped to the pharmacy?

1 A. Again, getting rusty, but yes.

2 Q. What is the main purpose of the security
3 requirement, in your understanding?

4 MR. HUDSON: Object to the form. Lack
5 of foundation.

6 BY MR. BARNES:

7 Q. What does it require?

8 A. Theft diversion and suspicious order.

9 Q. And do you know whether or not
10 compliance with that regulation is something that
11 is dependent upon the specific facts of each
12 specific distributor?

13 MR. HUDSON: Object to the form.

14 THE WITNESS: I would say yes.

15 BY MR. BARNES:

16 Q. In working with the DEA and during their
17 multiple inspections before, during, and after the
18 HBC narcotics room was set up or any of their
19 surprise audits, did they at any time ever give
20 you any indication that HBC was not in full
21 compliance with the security requirement?

22 A. No, they did not.

23 MR. HUDSON: Object to the form.

24 BY MR. BARNES:

25 Q. What is your understanding of whether or

1 investigations discussed?

2 A. No.

3 Q. One of the things you were asked about
4 is your opinion of whether or not there could be
5 suspicious orders in the system that Giant Eagle
6 and HBC had.

7 Do you remember those questions by HBC's
8 counsel?

9 A. I do.

10 Q. What is your idea or your understanding
11 of what a suspicious order is?

12 A. It's my own personal view of it.
13 Anything that's not in the quantities or in the
14 format that it was intended to be. Meaning a
15 store called for two units and discovered that it
16 only got one.

17 In itself, that becomes suspect and requires
18 investigation.

19 Q. Any other examples you can come up with
20 of suspicious orders?

21 A. Not specifically.

22 Q. So are you aware of any time when, at
23 HBC, the inventory counts were off?

24 A. Again, not specifically. But I've got
25 to believe through the course of our operation,

1 there would have been a time where the inventory
2 would have been off.

3 Q. And in that situation, would that be a
4 potential risk for diversion?

5 A. No. I don't believe so. Again, because
6 of the close circuit or the -- how will I say
7 it -- the fact that we were distributing to
8 ourselves, you know, the next stop or step would
9 have been that it would have gone to a pharmacy,
10 and there were checks and balances at the
11 pharmacy.

12 So there's a lot of layers that it would have
13 to go through.

14 Q. If a picker went and just went in and
15 took an item and then bar-coded it as if it had
16 or -- in other words, found out some way to -- by
17 the way, was there ever any theft, that you're
18 aware of, that ever occurred at the HBC facility?

19 A. Yes.

20 Q. Approximately how many times?

21 A. One.

22 Q. And when did that happen?

23 A. I got to believe it was 2012.

24 Q. Was that a picker or selector?

25 A. No.

1 Q. Who was that?

2 A. It was one of the managers.

3 Q. What was his or her name?

4 A. Andy Zelaski.

5 Q. Andy Zelaski was caught stealing?

6 A. Yes.

7 Q. Was it controlled substances?

8 A. I don't know the form that -- of whether
9 it was or not. I don't believe it was.

10 Q. But he was caught stealing narcotics?

11 A. No. I don't believe it was.

12 Q. What was he caught stealing?

13 A. It was Viagra.

14 Q. Viagra?

15 A. Yes.

16 Q. And that was a manager?

17 A. Yes.

18 Q. How long had that been going on?

19 A. It happened one time, and he was
20 immediately caught by our systems.

21 Q. Okay.

22 A. Christy caught it through the counts and
23 immediately reported him.

24 Q. Do you see, in your mind, a connection
25 between the security requirements or the inventory

1 count issues and monitoring for suspicious orders
2 of controlled substances?

3 MR. BARNES: Object to the form.

4 THE WITNESS: I'm not sure I'm following
5 you on that.

6 BY MR. HUDSON:

7 Q. Well, making sure the inventory count is
8 right is one of the things you've talked about a
9 lot today; right?

10 A. Correct.

11 Q. But the inventory count can still be
12 right, but you could have a suspicious order;
13 correct?

14 MR. BARNES: Object to form.

15 BY MR. HUDSON:

16 Q. Let me try it this way.

17 A. I would say yes, but through our systems
18 it would still be caught.

19 So if my inventory is correct, the checks and
20 balances on the other side of our closed loop at
21 the pharmacies would detect it. As soon as they
22 would detect it, because they're checking that
23 inbound order specific to each unit, sell unit,
24 they would call back to us and say, Guys, I was
25 supposed to get two. I got one.